IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 9.12.2004

Coram

The Honourable Mr. Justice A.K.RAJAN

Writ Petition No.11583 of 2001

A.Karuppasamy .. Petitioner

Vs.

Joint Commissioner/
Executive Officer,
Arulmigu Thandayuthapani
Thirukkoil,
Palani. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari as stated therein.

For petitioner:Mr. B.Ravi
for M/s.Hema sampath and
R.Subramanian.

For respondent:Mr.M.Venkatachalapathy
Senior Counsel for
Mr. M.Sriram

O R D E R

The above Writ Petition has been filed by the petitioner to call for the records pertaining to proceedings N.K.No.2103/2000/A10 dt.11.6.2001 issued by the respondent and to quash the same.

2. The petitioner is a barber by profession. He was given a licence to do tonsuring to the pilgrims, who would come to the Temple for tonsure. The respondent used to collect Rs.10/- from such persons, out of which, Rs. 4/- would be taken by the Temple and one Rupee would be taken for the instrument viz., blade and Rs.5/- would be given to the barber/petitioner. While so, during March 2001, the

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respondent called on the petitioner to produce proof in support of the petitioner's age. Accordingly, the petitioner submitted his SSLC Book, which was verified by the respondent who also took a xerox copy of the same taking note of my date of birth as 15.5.1942. The petitioner was informed that the licence would be cancelled on completion of the age of 60 years of the petitioner i.e. 30.6.2001 and he would be retired on that date. Accordingly, the order of cancellation of licence was issued on 11.6.2001 in which it is stated that the petitioner/barber, who was given the licence for tonsuring, would complete the age of 60 years on 30.6.2001. Therefore, from the afternoon on 30.6.2001, he was retired from the service. Consequently, the licence of the petitioner has been cancelled with effect from 30.6.2001, which has been challenged by the petitioner. Hence the above Writ Petition.

3. Learned counsel appearing for the petitioner submits that there is no relevancy between the retirement age of 60 years and grant of licence to a barber for tonsuring. The petitioner was not an employee of the Temple. Therefore, there is no question of attaining superannuation. The licence cannot be cancelled on the ground of attaining superannuation at the age of 60 years and hence, the impugned order is liable to be quashed.

4. Mr. Venkatachalapathi, learned Senior Counsel appearing for the respondent submits that it is only a licence, which can be revoked at any point of time without assigning any reason.

5. Consequently, learned counsel for the petitioner would claim his right to the licence, which was revoked by the respondent on 31.5.2002 by his proceedings dated 23.5.2002.

6. According to the learned Senior Counsel for the respondent, by way of interim order of this Court, the petitioner continued to enjoy the benefit of licence even during the pendency of this Writ Petition and when it was revoked by the proceedings of the respondent dated 23.5.2002, though the petitioner challenged the same by way of Revision before the Commissioner, HR & CE, which was dismissed, the petitioner did not choose to challenge that dismissal order and the said order has become final between the parties and hence the petitioner is not entitled to proceed with this Writ petition and the Writ Petition has become infructuous. Therefore, the Writ Petition is liable to be dismissed.

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7. Admittedly, the petitioner is not an employee of the Temple. Therefore, service rules are not applicable to him and also there cannot be a question of attaining the age of superannuation on completion of 60 years of the age. It is the licence, which was granted to the petitioner, to be renewed every year. For violation of any conditions thereunder, the licence can be revoked. Otherwise, the licence cannot be revoked. However, no violation of any condition is placed before this Court. Therefore, the licence granted to the petitioner cancelled on the ground of attaining the age of 60 years is not legally permissible and hence the impugned order is liable to be set aside.

8. The learned Counsel appearing for the petitioner submits that the licence granted to the petitioner was subject to renewal of the same every year and therefore, the respondent has got right not to renew the licence in future. This question does not arise at this point of time in this Writ Petition. As and when such orders are passed, it is always open for the petitioner to challenge the same seeking for appropriate remedy.

9. It is unfortunate that the Joint Commissioner/Executive Officer has sought to revoke the licence granted to the petitioner, who eaks his livelihood by tonsuring the pilgrims, on the ground of attaining the age of superannuation. The officers must show some restraints in such matters.

10. With the above observations, the Writ petition is allowed. No costs.

asvm

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

Joint Commissioner/
Executive Officer,
Arulmigu Thandayuthapani
Thirukkoil,
Palani.

1 cc to Mr.M.Sriram, Advocate SR 54184

1 cc to M/s.Hemasampath, Advocate SR 54210

W.P. No.11583 of 2001

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